

JUN 23 2004  
R09070  
T29673

# Submission of Federal Rules Under the Congressional Review Act

☐ President of the Senate

☒ Speaker of the House of Representatives

☐ GAO

Please fill the circles electronically or with black pen or #2 pencil.

1. Name of Department or Agency

Department of Defense

2. Subdivision or Office

OUSD(AT&L)DPAP(DAR)

3. Rule Title

Firefighting Services Contracts

4. Rule Identification Number (RIN) or Other Unique Identifier (if applicable)  
DFARS Case 2003-D107

5. Major Rule ☐ Non-major Rule ☒

6. Final Rule ☐ Other ☒ Interim Rule

7. With respect to this rule, did your agency solicit public comments? Yes ☐ No ☒ N/A ☐

8. Priority of Regulation (fill in one)

☒ Economically Significant; or  
Significant; or  
Substantive, Nonsignificant

☐ Routine and Frequent or  
Informational/Administrative/Other  
(Do not complete the other side of this form  
if filled in above.)

9. Effective Date (if applicable) June 23, 2004 (estimated)

10. Concise Summary of Rule (fill in one or both) attached ☒ stated in rule ☐

Submitted by: Deidre A. Lee (signature)

JUN 16 2004

Name: Deidre A. Lee

Title: Director, Defense Procurement and Acquisition Policy

For Congressional Use Only:

Date Received: \_\_\_\_\_

Committee of Jurisdiction: \_\_\_\_\_

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JUN 21 PM 12:41  
SPEAKER'S ROOMS  
U.S. HOUSE OF REPS.

	Yes	No	N/A
A. With respect to this rule, did your agency prepare an analysis of costs and benefits?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
B. With respect to this rule, at the final rulemaking stage, did your agency			
1. certify that the rule would not have a significant impact on a substantial number of small entities under 5 U.S.C. § 605(b)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
2. prepare a final Regulatory Flexibility Analysis under 5 U.S.C. § 604(a)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
C. With respect to this rule, did your agency prepare a written statement under § 202 of the Unfunded Mandates Reform Act of 1995?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
D. With respect to this rule, did your agency prepare an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
E. Does this rule contain a collection of information requiring OMB approval under the Paperwork Reduction Act of 1995?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
F. Did you discuss any of the following in the preamble to this rule?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
● E.O. 12612, Federalism	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● E.O. 12630, Government Actions and Interference with Constitutionally Protected Property Rights	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● E.O. 12866, Regulatory Planning and Review	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
● E.O. 12875, Enhancing the Intergovernmental Partnership	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● E.O. 12988, Civil Justice Reform	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● Other statutes or executive orders discussed in the preamble concerning the rulemaking process (please specify)			
_____			
_____			
_____			

(Billing Code 5001-08-P)

DEPARTMENT OF DEFENSE

48 CFR Part 237

[DFARS Case 2003-D107]

Defense Federal Acquisition Regulation Supplement;  
Firefighting Services Contracts

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 331 of the National Defense Authorization Act for Fiscal Year 2004. Section 331 provides authority for contractor performance of firefighting functions at military installations or facilities for periods of one year or less, if the functions would otherwise have to be performed by members of the armed forces who are not readily available by reason of a deployment.

DATES: Effective date: [Date of publication in Federal Register].

Comment date: Comments on the interim rule should be submitted to the address shown below on or before [60 days after date of publication], to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003-D107, using any of the following methods:

o Federal eRulemaking Portal: <http://www.regulations.gov>.  
Follow the instructions for submitting comments.

o Defense Acquisition Regulations Web Site:  
<http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the  
instructions for submitting comments.

o E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2003-D107 in  
the subject line of the message.

o Fax: (703) 602-0350.

o Mail: Defense Acquisition Regulations Council, Attn:  
Ms. Teresa Brooks, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense  
Pentagon, Washington, DC 20301-3062.

o Hand Delivery/Courier: Defense Acquisition Regulations  
Council, Crystal Square 4, Suite 200A, 241 18th Street,  
Arlington, VA 22202-3402.

All comments received will be posted to  
<http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Teresa Brooks,  
(703) 602-0326.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

10 U.S.C. 2465 prohibits DoD from entering into contracts  
for the performance of firefighting or security-guard functions  
at military installations or facilities, unless an exception  
applies. Section 331 of the National Defense Authorization Act  
for Fiscal Year 2004 (Public Law 108-136) added a new exception

to the prohibition at 10 U.S.C. 2465. The new exception permits award of a contract for the performance of firefighting functions at a military installation or facility, if the contract is for a period of one year or less and the functions would otherwise have to be performed by members of the armed forces who are not readily available due to a deployment. This interim rule amends DFARS 237.102-70 to reflect the new exception.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

#### **B. Regulatory Flexibility Act**

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because application of the rule is limited to firefighting functions at military installations or facilities for periods of one year or less, when members of the armed forces are not readily available due to a deployment. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D107.

#### **C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

**D. Determination to Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 331 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136). Section 331 provides authority for contractor performance of firefighting functions at military installations or facilities for periods of one year or less, if the functions would otherwise have to be performed by members of the armed forces who are not readily available due to a deployment. Section 331 became effective upon enactment on November 24, 2003. Comments received in response to this interim rule will be considered in the formation of the final rule.

**List of Subjects in 48 CFR Part 237**

Government procurement.

**Michele P. Peterson,**

*Executive Editor,*

*Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 237 is amended as follows:

1. The authority citation for 48 CFR Part 237 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 237—SERVICE CONTRACTING**

2. Section 237.102-70 is amended as follows:

- a. In paragraph (a)(2) by removing "or";
- b. In paragraph (a)(3) by removing the period and adding in its place "; or"; and

c. By adding paragraph (a)(4) to read as follows:

**237.102-70 Prohibition on contracting for firefighting or security-guard functions.**

(a) \* \* \*

(4) The contract—

- (i) Is for the performance of firefighting functions;
- (ii) Is for a period of 1 year or less; and
- (iii) Covers only the performance of firefighting functions that, in the absence of the contract, would have to be performed by members of the armed forces who are not readily available to perform such functions by reason of a deployment.

\* \* \* \* \*